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CITATIONS

Cases:

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102332—33——1

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. —

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, petitioner

v.

UNITED STATES OF AMERICA EX REL. CHESTATEE Pyrites & Chemical Corporation

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of Harold L. Ickes,[1] Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above-entitled cause on December 12, 1932, reversing the judgment of the Supreme Court of the District of Columbia.

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[1] By order entered in the Court of Appeals of the District of Columbia on March 7, 1933, Harold L. Ickes, Secretary of the Interior, was substituted as party appellee in that court in place of Ray Lyman Wilbur, resigned. A certified copy of this order has been filed with the Clerk of this Court.

OPINIONS BELOW

Neither the opinion of the Supreme Court of the District of Columbia (R. 73–78) nor the opinion of the Court of Appeals of the District of Columbia (R. 94–98) has been reported.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered December 12, 1932. (R. 98.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner has complied with the order of the Supreme Court of the District of Columbia (R. 35–36) issued pursuant to the mandate of this Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 284 U. S. 231. Answer to this question turns upon whether the petitioner's action in disallowing that part of relator's claim under the War Minerals Relief Act which was based upon interest on borrowed money accruing after March 2, 1919, the effective date of that Act, was erroneous as a matter of law.

STATUTES INVOLVED

These are set forth in the Appendix, pp. 15–20, *infra.*

STATEMENT

On March 5, 1919, the relator, the Chestatee Pyrites & Chemical Corporation, filed with the Secre-

tary of the Interior a claim for losses alleged to have been incurred in connection with the production of pyrites under conditions specified in Section 5 of the War Minerals Relief Act, p. 15, *infra*. (R. 3, 27, 94.) This claim, with respect to which awards totaling approximately $840,000 have from time to time been paid (R. 29, 48, 53, 77), included items of interest on money borrowed and lost by the claimant.[2] The Secretary ruled that under the statute interest on money borrowed was not reimbursable. (R. 5, 13–16, 25, 27, 94–95.)

Thereafter, on July 27, 1923, the relator sought a writ of mandamus in the Supreme Court of the District of Columbia to compel the Secretary to allow the interest claimed. The petition for the writ was apparently broad enough in its allegations to raise the queston of claimant's right to recover interest paid or accrued both before and after March 2, 1919, the effective date of the Relief Act. (See R. 59.) On January 9, 1924, the court held that interest on borrowed money was an allowable item and awarded a writ of mandamus. There is nothing in the court's opinion to indicate that it considered the question of claimant's right to recover interest paid or accruing after March 2, 1919. Upon appeal the judgment of the Supreme Court of the District was affirmed by the Court of Appeals

[2] This claim is not in the record but apparently it was broad enough in terms, as subsequently amended or enlarged, to include interest paid or accruing after March 2, 1919, the date of the Relief Act. (R. 3, 27, 39, 58–59.)

of the District (*Work* v. *United States*, 298 Fed. 839). That court apparently did not consider whether the statute contemplated the allowance of interest paid or accrued after March 2, 1919. In its opinion the court said (p. 841)—

> This narrows the case to the single question of law, whether the item of interest is embraced within the claim for net losses incurred by relator.

Thereafter the decision of the Court of Appeals was reversed by this Court (267 U. S. 185) upon the ground that under the statute the Secretary's decision was final and the courts were without jurisdiction to review it. The briefs of the parties before this Court discussed only the general question whether interest on borrowed money was an allowable item.

On February 13, 1929, Congress amended the War Minerals Relief Act so as to provide that the final decisions of the Secretary of the Interior on questions of law arising under the statute might be reviewed by the Supreme Court of the District of Columbia. (P. 19, *infra*.) The relator thereupon brought an action in that court for a writ of mandamus to compel the Secretary to take jurisdiction of and allow its claim for interest on borrowed money. (R. 2–7.) On March 7, 1930, that court denied mandamus, holding that interest was not an allowable item. Appeal was taken to the Court of Appeals of the District on assignments of errors which did not specifically distinguish

between interest accruing before and interest accruing after March 2, 1919, but which did refer to a claim for interest which "appellant obligated itself to pay for the use of borrowed money." (See record in No. 67, October Term, 1931, p. 28.) On February 2, 1931, the Court of Appeals reversed the judgment of the Supreme Court of the District, holding that interest was an allowable item. (47 F. (2d) 424.) The opinion of the Court of Appeals does not specifically deal with the question whether the allowance of interest should be limited to that paid or accrued prior to the passage of the statute, but the court did say that "interest paid or obligated to be paid in this case should be allowed." Upon certiorari, this Court affirmed the judgment of the Court of Appeals (284 U. S. 231) and remanded the case to the Supreme Court of the District of Columbia—

> with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as construed in the opinion of this Court.

Nothing in the briefs of either party filed in this Court specifically raised or called to the attention of this Court the question whether interest paid and accruing after March 2, 1919, was allowable. The Court said in its opinion (p. 238):

> The amount of interest that at the time of the passage of the Relief Act March 2,

> 1919, had been paid or incurred by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date.

On December 15, 1931, the Supreme Court of the District of Columbia entered an order upon the mandate of this Court, that (R. 35–36):

> a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as Secretary of the Interior, commanding him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites * * *.

Waiving the formal issuance of a writ of mandamus (R. 86), the Secretary proceeded to carry out the order of the court, and, after reviewing relator's claim, made an award of $44,451.45, this amount representing (R. 48)—

> the amount of interest that at the time of the passage of the act of Congress of March 2, 1919, had been paid or the obligations incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites at the request or demand of the Department of the Interior * * *, and for which in justice and equity the

> relator was entitled to receive reimbursement * * *.

The relator thereupon filed in the Supreme Court of the District a document entitled "Petition to Enforce Decree" (R. 36–43) which alleged that the Secretary had disregarded the law and the mandate of this Court in that he had refused to allow relator its net losses growing out of—

> obligations incurred to pay interest beyond March 2, 1919, * * * although such obligations were incurred prior to November 12, 1918, and were existing on and prior to March 2, 1919, and were and are continuing to run thereafter.

The petition alleged that the amount of interest owing to relator as of December 31, 1931, after allowing for the award of $44,451.45, was $524,276.43, and prayed that the Secretary be directed to award interest paid and obligated to be paid for money borrowed by relator "according to the terms and tenor of the obligations to the date that payment therefor is made." Thereupon, the court apparently issued a rule upon the Secretary to show cause why he had not complied with the decree of December 31, 1931.[3] The Secretary filed an answer to the rule (R. 45–52, 96) in which he averred that he had complied with the decree by allowing to relator all interest paid or accrued prior to March 2, 1919. The relator filed a traverse to the Secretary's answer (R. 65–73), whereupon testimony was taken

[3] This rule does not appear in the record.

in open court upon the pleadings (R. 73, 82). On June 7, 1932, the court filed a memorandum opinion holding that the Secretary had fully complied with the decree of December 15, 1931 (R. 73–78), and thereafter entered an order that relator's petition be denied (R. 78–79). Upon appeal to the Court of Appeals the judgment was reversed, that court holding that the War Minerals Relief Act did not limit the recovery of interest to that paid or accrued prior to the effective date of the statute.[4] (R. 94–98.)

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

(1) In holding that the mandate and decision of this Court do not limit the recovery of interest on borrowed money to interest paid or accrued prior to the effective date of the War Minerals Relief Act;

(2) In holding that the relator is entitled to recover the amount of any net loss incurred by it by reason of interest paid or accrued after March 2, 1919, on money borrowed by it;

[4] Relator's computation of the amount of interest owing to it as of December 31, 1931, appears at R. 41, 70–73. The Court of Appeals did not consider whether this computation was correct, apparently assuming that the amount of interest owing to relator could be easily ascertained after determination of the question whether relator is entitled to interest accruing after March 2, 1919. Apparently no computation of interest beyond March 2, 1919, has been made by the Secretary. (R. 84.) His answer to the rule to show cause (R. 49, 51) would indicate that in his opinion relator's computation is erroneous, even if relator is entitled to interest accruing after March 2, 1919.

(3) In holding that the decision of the Secretary of the Interior that the allowance of interest on borrowed money must stop as of the effective date of the War Minerals Relief Act was erroneous;

(4) In holding that this Court has construed the Act of March 2, 1919, as amended, to require petitioner to consider relator's claim for interest accruing after its passage;

(5) In holding that petitioner has not complied with the decree of the Supreme Court of the District of Columbia of December 15, 1931, entered upon the mandate of the Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites and Chemical Corporation,* 284 U. S. 231.

(6) In reversing the judgment of the Supreme Court of the District of Columbia and remanding the cause for further proceedings.

REASONS FOR GRANTING THE WRIT

1. The question presented involves the compliance of the parties with the mandate of this Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corp.,* 284 U. S. 231. In that case the Court held that under Section 5 of the War Minerals Relief Act, as amended, interest on money borrowed and lost in producing or preparing to produce minerals under conditions specified in the statute should be taken into account by the Secretary of the Interior in determining the amount of a claimant's net loss. While the petition for mandamus upon which that case arose was

broad enough to cover interest paid and accruing after the effective date of the Relief Act, the question discussed in the briefs of the parties and in the oral argument was whether *any interest* was an allowable item under the statute, and no direct reference was made to the question whether the statute limited the interest allowable to that paid or accrued prior to the effective date thereof.

This Court remanded the case to the Supreme Court of the District of Columbia "with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as here construed." The order of the Supreme Court of the District of Columbia issued on December 15, 1931, upon the mandate (R. 35–36), directed the issuance of a writ of mandamus to the Secretary—

> commanding him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost * * *.

The Secretary of the Interior has construed the mandate and decree as requiring the allowance only of interest paid or accrued prior to the effective date of the statute, and the Secretary has made an award of such interest in the amount of $44,451.45. The Supreme Court of the District has held that this is a full compliance with its decree and

the mandate of this Court. The relator contends that the Secretary has not complied with the mandate and decree, that it is entitled to interest on any indebtedness incurred pursuant to the statute *until, if ever, such indebtedness is paid,* and it asserts that the amount of such interest as of December 31, 1931, after allowing for the award of $44,451.45, is $524,276.43. The relator's contention has been upheld by the Court of Appeals.

2. We believe that the mandate of this Court has been misunderstood in the court below and that this Court's interpretation of its own mandate is necessary to carry out its judgment.

Section 5 of the War Minerals Relief Act, p. 15, *infra,* authorizes the Secretary of the Interior—

> to adjust, liquidate, and pay such net losses *as have been suffered* by any person, firm, or corporation * * *. (Italics ours.)

under specified conditions. This language clearly indicates that the recoverable losses are limited to those sustained at or prior to the effective date of the statute.

In its opinion required to be followed by its mandate, 284 U. S. 231, this Court said (p. 238):

> The amount of interest that *at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred* by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss *as of that date.* (Italics ours.)

While the question whether interest paid or accrued after March 2, 1919, is recoverable under the statute was not argued in the briefs or orally, it was, to say the least, " lurking in the record," and the language above quoted seems to indicate that in the opinion of this Court such interest is not recoverable.

These views find confirmation in the decision of this Court in *Wilbur* v. *United States ex rel. Vindicator Consolidated Gold Mining Co.*, 284 U. S. 231. There the Court held that under Section 5 of the Relief Act, as amended, the Secretary was empowered to take into account losses arising out of expenditures for the purchase of land to which the claimant retained title after the enactment of the statute. In this connection the Court said (p. 237)—

> The Secretary is required to proceed to ascertain whether relator, on March 2, 1919, had incurred net loss by reason of the expenditure of $16,259 for such land; * * *.

The inference from this holding is that losses occurring after March 2, 1919, through further depreciation or shrinkage in the value of land acquired during the period of stimulation, the ownership of which was retained after March 2, 1929, are not recoverable. As pointed out in the opinion of the Attorney General (R. 63), there is no distinction—

> in principle between losses suffered after March 2, 1919, through further shrinkage of land values and losses suffered after March

> 2, 1919, through continued accrual of interest on obligations previously incurred and which the claimant had not been able or did not see fit to pay off.[5]

The petitioner contends that Congress intended by the War Minerals Relief Act to limit the recoverable losses to those incurred at or prior to the effective date of the statute, and that it did not intend to authorize the Secretary to allow and pay interest indefinitely to such period as the claimant might see fit to extend its liability. The statute was not predicated upon the recognition of an indebtedness but was a mere "gratuity based on equitable and moral considerations." *Work* v. *Rives*, 267 U. S., 175, 181.

3. The question presented is of general importance and determination thereof is deemed to be necessary in the proper administration of the War Minerals Relief Act by the administrative official charged with its enforcement. Although definite information is not available as to the number of pending claims which involve the question here presented, we are advised by the Department of the Interior that such question is presented in numerous pending claims and that the aggregate amount of interest involved in such claims is very

[5] In its memorandum opinion the Supreme Court of the District said (R. 76): "It appears from the facts hereafter discussed that in all probability plaintiff never will be able to pay its entire interest-bearing debt. Its contention in effect is that it is entitled to a permanent annual payment on its unpaid debt.

large. (See footnote 2, p. 10, in the petition for a writ of certiorari in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 284 U. S. 231.)

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

THOMAS D. THACHER,
Solicitor General.

MARCH, 1933.

APPENDIX

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling

and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen

hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further,* That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be

claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said Act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for

certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

U. S. GOVERNMENT PRINTING OFFICE: 1938